IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. 7991 of 2006

Date of Decision: 30.11.2006

Rachchpal Singh .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE J. S. KHEHAR
HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Harsh Aggarwal, Advocate
for the petitioner.

Ms.Rita Kohli, Senior Deputy Advocate General, Punjab
for the respondents.

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J.S.KHEHAR, J.(Oral)

The petitioner was inducted into the Police Department as a Constable on 15.1.1988. During the course of his employment, the petitioner was involved in an accident on 20.6.1994, as a consequence of which one of the persons riding on the Rehra, with which the Government vehicle driven by the petitioner collided, died on account of injuries received in the accident.

On the basis of the alleged negligence at the hands of the petitioner which resulted in the accident on 20.6.1994, he was challaned under Section 279 read with Section 304-A of the Indian Penal Code. By a judgment/order dated 13.3.2001 he was convicted by the Judicial Magistrate

Ist Class, Patiala. Dissatisfied by the order dated 13.3.2001, the petitioner preferred an appeal. The aforesaid appeal was dismissed on 5.4.2002 by the Additional Sessions Judge, Patiala. It is the common case of the rival parties that the petitioner has since preferred Criminal Revision No.759 of 2002 against the orders dated 13.3.2001 and 5.4.2002 passed by the Judicial Magistrate Ist Class, Patiala and Additional Sessions Judge, Patiala respectively. The aforesaid Criminal Revision is stated to be pending in this Court.

Well after his conviction, the petitioner moved an application on 4.6.2005 seeking voluntary retirement on the ground that he had completed 55 years of age. The request made by the petitioner for voluntary retirement was accepted. He was accordingly allowed to voluntary retire w.e.f. 30.9.2005. A perusal of the order allowing the petitioner to retire voluntarily clearly mandates that pensionary benefits would be paid to him after the disposal of the case in furtherance of which he was convicted by the Judicial Magistrate Ist Class, Patiala on 13.3.2001. It is this part of the order of voluntary retirement which is subject matter of challenge in this petition at the hands of the petitioner.

Yet another communication dated 22.4.2006 (Annexure P4) was addressed by the Senior Superintendent of Police, Patiala to the petitioner informing him that his pensionary benefits had been kept pending till the decision of the matter arising out of his criminal prosecution. The petitioner has, therefore, impugned the order dated 22.4.2006 (Annexure P4) as well.

In the written statement filed by the respondents as also during the course of hearing, learned counsel for the respondents vehemently

placed reliance on Rule 2.2(a) of the Punjab Civil Services Rules, Vol.II for denying the petitioner retiral benefits. Rule 2.2(a) of the Punjab Civil Services Rules relied upon by the learned counsel for the respondents is being extracted hereunder:

> "2.2 (a). Future good conduct is an implied condition of every grant of a pension. The Government reserve to themselves the right of withholding a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct."

It is not possible for us to accept the contention of the learned counsel for the respondents on the basis of Rule 2.2(a) of the Punjab Civil Services Rules (extracted hereinabove), on account of the fact that the same is applicable for an act subsequent to the date of retirement, as is apparent from the commencing words of the aforesaid Rule, namely, "future good conduct....". Since the petitioner was admittedly allowed to retire voluntarily by an order dated 29.9.2005 w.e.f. 30.9.2005, reliance on Rule 2.2(a) of the Punjab Civil Services Rules, Vol.II, is clearly mis-conceived. Rule 2.2 (a), aforesaid, can be applied to the petitioners for conduct after 30.9.2005, whereas, the pleadings in the instant writ petition make no reference to any conduct after 30.9.2005. Accordingly, it is not possible for us to accept the contention of the learned counsel for the respondents that the petitioner can be denied pension on account of his conviction at the hands of the Judicial Magistrate Ist Class, Patiala as far back as 13.3.2001.

Learned counsel for the respondents has also placed reliance on Rule 2.2 (b) of the Punjab Civil Services Rules, Vol.II. The same is being extracted hereunder:

> "2.2(b). The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement."

A perusal of the aforesaid Rule reveals, that the Government has the inherent right to withhold or withdraw pension, or any part of it, if the pensioner is found, in a departmental or judicial proceedings, to have committed a grave mis-conduct. In order to establish that the petitioner had committed a grave mis-conduct, learned counsel for the respondents has invited our attention to the order passed by the Judicial Magistrate Ist Class, Patiala dated 13.3.2001 as also to the order passed by the Additional Sessions Judge, Patiala dated 5.4.2002 whereby the former order was upheld.

Although the aforesaid contentions at the hands of the learned counsel for the respondents are attractive on first blush, it is not possible for us to accept the same. It was open to the respondents in exercise of the authorities vested in them under Clause (a) of second proviso to Article 311 of Constitution of India, to dismiss or remove an employee from service, consequent upon his conviction. In the present case, the conviction of the petitioner is at the hands of the Judicial Magistrate Ist Class, Patiala on 13.3.2001. Be that as it may, despite the fact that the petitioner stood

convicted on 13.3.2001 under Section 279 read with Section 304-A of the Indian Penal Code, he was permitted to retire voluntarily by an order dated 29.9.2005. It is, therefore, obvious that the respondents had consciously decided not to dismiss or remove the petitioner from service. Had the aforesaid course been adopted by the respondents, it would be open to the respondents to deny the pension to the petitioner. Now that the petitioner has been permitted to retire voluntarily on completion of 55 years of age vide order dated 29.9.2005, the petitioner cannot be denied pension earned by him on account of the qualifying service rendered by him, moreso, because the order of the petitioner's voluntary retirement was passed when the petitioner had already been convicted.

In view of the above, the instant writ petition is allowed. The order dated 29.9.2005 (Annexure P3) which denies pensionary benefits to the petitioner, till after the disposal of the criminal case, as also the order dated 22.4.2006 (Annexure P4), to the same effect, are hereby set aside. The respondents are directed to calculate the pension payable to the petitioner within a period of two months from the date of receipt of certified copy of the order. The same shall be released to him within a further period of one month.

Disposed of accordingly.

(J. S. KHEHAR)
JUDGE

(S. D. ANAND)
JUDGE

November 30, 2006
SRM